National Labor Relations Board



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Weekly Summary of NLRB Cases

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Cibao Meat Products, Inc.Bronx, NY1Lowe's HIW, Inc.Perris, CA1

CASES SUMMARIZED

OTHER CONTENTS

| <u>List of Decisions of Administrative Law Judges</u> | 2 |
|--|---|
| | |
| <u>List of Unpublished Board Decisions and Orders in Representation Cases</u> | 2 |
| Contested Reports of Regional Directors and Hearing Officers | |
| Uncontested Reports of Regional Directors and Hearing Officers | |
| Request for Review of Regional Directors' Decisions and Directions | |
| of Elections and Decisions and Orders | |

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Cibao Meat Products, Inc. (2-CA-36943; 349 NLRB No. 47) Bronx, NY March 6, 2007. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to make payments to the UNITE Washable Clothing Sportswear and Allied Industries Funds and their successors, UNITE National Insurance Fund and UNITE National Retirement Fund, for its employees' coverage after March 1, 2005. The Board ordered the Respondent to make up all required contributions subsequent to that date and to reimburse unit employees for any expenses resulting from its failure to make such required payments or contributions. The panel further found merit in the General Counsel's exception that the issue of whether the parties ever reached a good-faith impasse, and the amount of contributions owed, should be resolved in a compliance proceeding. [HTML] [PDF]

(Members Schaumber, Kirsanow and Walsh participated.)

Charges filed by UNITE-HERE Local 169; complaint alleged violation of Section 8(a)(5) and (1). Hearing at New York on June 5, 2006. Adm. Law Judge Eleanor MacDonald issued her decision Sept. 25, 2006.

Lowe's HIW, Inc. (21-RC-20900; 349 NLRB No. 48) Perris, CA March 8, 2007. The Board certified the results of an election held on June 29 and 30, 2006, which Teamsters Local 166 lost 450 to 325. The hearing officer had recommended that the election be set aside, finding that the Employer engaged in objectionable conduct when its agent had conversations with, and created the impression of surveillance among, employees waiting to vote. The Board disagreed. [HTML] [PDF]

The election was held over four polling sessions in a 2-day period in a centrally located operations office. Maria Rodriguez, a trainer in the Employer's human resources department, transported individuals to the voting area in a golf cart. After transporting certain individuals to the voting area during the first hour of the first polling session, Rodriguez stood outside the operations office for at least 20 minutes, holding the office door for employees waiting in line to vote while telling them to "have their votes ready." A Board agent asked Rodriguez if she was going to vote and Rodriguez answered no. The Board agent told Rodriguez that she could not wait around or pass by the operations office. In a later instance during the first session, Rodriguez waited by the office with the golf cart. The Board agent again instructed Rodriguez that she could not loiter by the office if she was not voting.

The Board has long held that an election will be set aside if a party to the election engages in prolonged conversation with prospective voters waiting in line to cast their ballots, regardless of the content of that conversation. *Milchem, Inc.*, 170 NLRB 362 (1968). Member Schaumber and Kirsanow said assuming, *arguendo*, that the Petitioner established Rodriguez's agency, the Petitioner failed to establish that Rodriguez violated the *Milchem* rule. They found the conduct in this case "comparable" to that of the four lead employees selected by the employer in *Longs Drug Stores California*, 347 NLRB No. 45 (2006), to maintain control in the vicinity of the voting line who told employees waiting in line to vote to "hurry up." Members

Schaumber and Kirsanow decided that these brief statements cannot be considered prolonged conversation embodied in the *Milchem* rule. Further, they found no merit in the hearing officer's unsupported conclusion that Rodriguez' conduct created the impression of surveillance.

Member Walsh, concurring in the result, would find that the Petitioner failed to prove that Rodriguez was acting as the Employer's agent, and that Rodriquez's conduct, judged under the correct standard for evaluating electioneering at the polls, did not warrant setting aside the election. He noted that the Board considers a number of factors, including whether the alleged electioneering was conducted by a party or by employees, whether it occurred within or near the polling place, and whether it was conducted within a designated "no electioneering area," or contrary to the instructions of a Board agent. The Board also considers the nature and extent of the alleged electioneering. *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1118–1119 (1982). Applying these standards, Member Walsh found merit in the argument that Rodriquez's conversations with voters and extended stays in the polling area may have been objectionable. However, since only about 30 voters were exposed to Rodriquez's conduct, and the Petitioner lost the election by 125 votes, he would not set the election aside on that basis.

(Members Schaumber, Kirsanow, and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

National Broadcasting Co., Inc. (Television and Radio Artists, AFTRA) New York, NY March 5, 2007. 2-CA-37396; JD(NY)-14-07, Judge Steven Fish.

Master 2 Plumbing & Heating and Bayville Holdings, LLC (Plumbers Local 9) Trenton, NJ March 6, 2007. 22-CA-27350, 27400; JD-16-07, Judge Eric M. Fine.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Engine Power Components, Inc., Grand Haven, MI, 7-RC-22972, March 7, 2007 (Chairman Battista and Members Liebman and Kirsanow)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Albertson's, LLC, Santa Fe, NM, 28-RC-6474, March 7, 2007 (Chairman Battista and Members Kirsanow and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

The Kalama Beach Corp. d/b/a Malama Market, Pahoa, HI, 37-RC-4151, March 7, 2007 (Members Liebman and Walsh; Member Kirsanow dissenting in part)
